

§ 25.2502-2

calendar year 1969, A made taxable gifts totaling \$50,000. The full amount of A's specific exemption provided under section 2521, which was in effect at the time, was claimed and allowed in 1968. The computation of the gift tax for the calendar period 1982 (following the steps set forth in paragraph (a) of this section) is shown below.

(1) Amount of taxable gifts for the calendar year 1982, \$240,000.

(2) Total amount of taxable gifts for preceding calendar periods (\$100,000+\$50,000), \$150,000.

(3) Total taxable gifts, \$390,000.

(4) Tax computed on item 3 (in accordance with the rate schedule in effect for the year 1982), \$118,400.

(5) Tax computed on item 2 (using same rate schedule), \$38,800.

(6) Tax for year 1982 (item 4 minus item 5), \$79,600.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28725, Dec. 29, 1972; T.D. 7910, 48 FR 40372, Sept. 7, 1983; T.D. 8395, 57 FR 4255, Feb. 4, 1992]

§ 25.2502-2 Donor primarily liable for tax.

Section 2502(d) provides that the donor shall pay the tax. If the donor dies before the tax is paid the amount of the tax is a debt due the United States from the decedent's estate and his executor or administrator is responsible for its payment out of the estate. (See § 25.6151-1 for the time and place for paying the tax.) If there is no duly qualified executor or administrator, the heirs, legatees, devisees, and distributees are liable for and required to pay the tax to the extent of the value of their inheritances, bequests, devises, or distributive shares of the donor's estate. If a husband and wife effectively signify consent, under section 2513, to have gifts made to a third party during any "calendar period" (as defined in § 25.2502-1(c)(1)) considered as made one-half by each, the liability with respect to the gift tax of each spouse for that calendar period is joint and several (see § 25.2513-4). As to the personal liability of the donee, see paragraph (b) of § 301.6324-1 of this chapter (Regulations on Procedure and Administration). As to the personal liability of the executor or administrator, see section 3467 of the Revised Statutes (31 U.S.C. 192), which reads as follows:

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Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

As used in such section 3467, the word "debt" includes a beneficiary's distributive share of an estate. Thus if an executor pays a debt due by the estate which is being administered by him or distributes any portion of the estate before there is paid all of the gift tax which he has a duty to pay, the executor is personally liable, to the extent of the payment or distribution, for so much of the gift tax as remains due and unpaid.

[T.D. 7238, 37 FR 28726, Dec. 29, 1972, as amended by T.D. 7910, 48 FR 40373, Sept. 7, 1983]

§ 25.2503-1 General definitions of "taxable gifts" and of "total amount of gifts."

The term *taxable gifts* means the "total amount of gifts" made by the donor during the "calendar period" (as defined in § 25.2502-1(c)(1)) less the deductions provided for in sections 2521 (as in effect before its repeal by the Tax Reform Act of 1976), 2522, and 2523 (specific exemption, charitable, etc., gifts and the marital deduction, respectively). The term "total amount of gifts" means the sum of the values of the gifts made during the calendar period less the amounts excludable under section 2503(b). See § 25.2503-2. The entire value of any gift of a future interest in property must be included in the total amount of gifts for the calendar period in which the gift is made. See § 25.2503-3.

[T.D. 7910, 48 FR 40373, Sept. 7, 1983]

§ 25.2503-2 Exclusions from gifts.

(a) Except as provided in paragraph (f) of this section (involving gifts to a noncitizen spouse), the first \$10,000 of gifts made to any one donee during the calendar year 1982 or any calendar year thereafter, except gifts of future interests in property as defined in §§ 25.2503-

3 and 25.2503-4, is excluded in determining the total amount of gifts for the calendar year. In the case of a gift in trust the beneficiary of the trust is the donee.

(b) *Gifts made after December 31, 1970 and before January 1, 1982.* In computing taxable gifts for the calendar quarter, in the case of gifts (other than gifts of future interests in property) made to any person by the donor during any calendar quarter of the calendar year 1971 or any subsequent calendar year, \$3,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of any such calendar year shall not be included in the total amount of gifts made during such quarter. Thus, the first \$3,000 of gifts made to any one donee during the calendar year 1971 or any calendar year thereafter, except gifts of future interests in property as defined in §§ 25.2503-3 and 25.2503-4, is excluded in determining the total amount of gifts for a calendar quarter. In the case of a gift in trust the beneficiary of the trust is the donee. The application of this paragraph may be illustrated by the following examples:

Example (1). A made a gift of \$3,000 to B on January 8, 1971, and on April 20, 1971, gave B an additional gift of \$10,000. A made no other gifts in 1971. The total amount of gifts made by A during the second quarter of 1971 is \$10,000 because the \$3,000 exclusion provided by section 2503(b) is first applied to the January 8th gift.

Example (2). A gave \$2,000 to B on January 8, 1971, and on April 20, 1971, gave him \$10,000. The total amount of gifts made by A during the second quarter of 1971 is \$9,000 because only \$2,000 of the \$3,000 exclusion provided by section 2503(b) was applied against the January 8th gift; \$1,000 was available to offset other gifts (except gifts of a future interest) made to B during 1971.

(c) *Gifts made before January 1, 1971.* The first \$3,000 of gifts made to any one donee during the calendar year 1955, or 1970, or any calendar year intervening between calendar year 1955 and calendar year 1970, except gifts of future interests in property as defined in §§ 25.2503-3 and 25.2503-4, is excluded in determining the total amount of gifts for the calendar year. In the case of a gift in trust the beneficiary of the trust is the donee.

(d) *Transitional rule.* The increased annual gift tax exclusion as defined in section 2503(b) shall not apply to any gift subject to a power of appointment granted under an instrument executed before September 12, 1981, and not amended on or after that date, provided that: (1) The power is exercisable after December 31, 1981, (2) the power is expressly defined in terms of, or by reference to, the amount of the gift tax exclusion under section 2503(b) (or the corresponding provision of prior law), and (3) there is not enacted a State law applicable to such instrument which construes the power of appointment as referring to the increased annual gift tax exclusion provided by the Economic Recovery Tax Act of 1981.

(e) *Examples.* The provisions of paragraph (d) of this section may be illustrated by the following examples:

Example (1). A executed an instrument to create a trust for the benefit of B on July 2, 1981. The trust granted to B the power, for a period of 90 days after any transfer of cash to the trust, to withdraw from the trust the lesser of the amount of the transferred cash or the amount equal to the section 2503(b) annual gift tax exclusion. The trust was not amended on or after September 12, 1981. No state statute has been enacted which construes the power of appointment as referring to the increased annual gift tax exclusion provided by the Economic Recovery Tax Act of 1981. Accordingly, the maximum annual gift tax exclusion applicable to any gift subject to the exercise of the power of appointment is \$3,000.

Example (2). Assume the same facts as in example (1) except that the power of appointment granted in the trust refers to section 2503(b) as amended at any time. The maximum annual gift tax exclusion applicable to any gift subject to the exercise of the power of appointment is \$10,000.

(f) *Special rule in the case of gifts made on or after July 14, 1988, to a spouse who is not a United States citizen—(1) In general.* Subject to the special rules set forth at § 20.2056A-1(c) of this chapter, in the case of gifts made on or after July 14, 1988, if the donee of the gift is the donor's spouse and the donee spouse is not a citizen of the United States at the time of the gift, the first \$100,000 of gifts made during the calendar year to the donee spouse (except gifts of future interests) is excluded in determining the total amount of gifts for the calendar year. The rule of this

paragraph (f) applies regardless of whether the donor is a citizen or resident of the United States for purposes of chapter 12 of the Internal Revenue Code.

(2) *Gifts made after June 29, 1989.* In the case of gifts made after June 29, 1989, the \$100,000 exclusion provided in paragraph (f)(1) of this section applies only if the gift in excess of the otherwise applicable annual exclusion is in a form that qualifies for the gift tax marital deduction under section 2523(a) but for the provisions of section 2523(i)(1) (disallowing the marital deduction if the donee spouse is not a United States citizen.) See § 25.2523(i)-1(d), *Example 4*.

(3) *Effective date.* This paragraph (f) is effective with respect to gifts made after August 22, 1995.

[T.D. 7238, 37 FR 28727, Dec. 29, 1972, as amended by T.D. 7910, 48 FR 40373, Sept. 7, 1983; T.D. 7978, 49 FR 38541, Oct. 1, 1984; T.D. 8612, 60 FR 43552, Aug. 22, 1995]

§ 25.2503-3 Future interests in property.

(a) No part of the value of a gift of a future interest may be excluded in determining the total amount of gifts made during the “calendar period” (as defined in § 25.2502-1(c)(1)). “Future interest” is a legal term, and includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession, or enjoyment at some future date or time. The term has no reference to such contractual rights as exist in a bond, note (though bearing no interest until maturity), or in a policy of life insurance, the obligations of which are to be discharged by payments in the future. But a future interest or interests in such contractual obligations may be created by the limitations contained in a trust or other instrument of transfer used in effecting a gift.

(b) An unrestricted right to the immediate use, possession, or enjoyment of property or the income from property (such as a life estate or term certain) is a present interest in property. An exclusion is allowable with respect to a gift of such an interest (but not in

excess of the value of the interest). If a donee has received a present interest in property, the possibility that such interest may be diminished by the transfer of a greater interest in the same property to the donee through the exercise of a power is disregarded in computing the value of the present interest, to the extent that no part of such interest will at any time pass to any other person (see example (4) of paragraph (c) of this section). For an exception to the rule disallowing an exclusion for gifts of future interests in the case of certain gifts to minors, see § 25.2503-4.

(c) The operation of this section may be illustrated by the following examples:

Example (1). Under the terms of a trust created by A the trustee is directed to pay the net income to B, so long as B shall live. The trustee is authorized in his discretion to withhold payments of income during any period he deems advisable and add such income to the trust corpus. Since B's right to receive the income payments is subject to the trustee's discretion, it is not a present interest and no exclusion is allowable with respect to the transfer in trust.

Example (2). C transfers certain insurance policies on his own life to a trust created for the benefit of D. Upon C's death the proceeds of the policies are to be invested and the net income therefrom paid to D during his lifetime. Since the income payments to D will not begin until after C's death the transfer in trust represents a gift of a future interest in property against which no exclusion is allowable.

Example (3). Under the terms of a trust created by E the net income is to be distributed to E's three children in such shares as the trustee, in his uncontrolled discretion deems advisable. While the terms of the trust provide that all of the net income is to be distributed, the amount of income any one of the three beneficiaries will receive rests entirely within the trustee's discretion and cannot be presently ascertained. Accordingly, no exclusions are allowable with respect to the transfers to the trust.

Example (4). Under the terms of a trust the net income is to be paid to F for life, with the remainder payable to G on F's death. The trustee has the uncontrolled power to pay over the corpus to F at any time. Although F's present right to receive the income may be terminated, no other person has the right to such income interest. Accordingly, the power in the trustee is disregarded in determining the value of F's